UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AKAL SECURITY, INC.

Employer

and **Case 13-RC-21775**

COMMITTEE FOR FAIR REPRESENTATION

Petitioner

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Intervenor[1]

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.[2]

I. Issues and Parties' Positions

The Petitioner seeks a representation election in unit consisting of the Employer's security guards employed in Illinois, Indiana, Wisconsin, and Minnesota pursuant to a "4 State Contract" between the Employer and the Department of Homeland Security. The Intervenor, which presently represents the Employer's security guards in four separate statewide units, contends that unit sought by the Petitioner, combining all four statewide units, is inappropriate. The Employer took no position on the appropriateness of the existing four statewide units or the com-

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[1] The International Union, Security, Police and Fire Professionals of America (SPFPA) intervened based on its status as the incumbent representative of the guards sought by the Petitioner.

[2] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

bined unit sought by the Petitioner. The Intervenor also contends that the Petitioner's membership is not limited to guard employees and is therefore not eligible to be certified as the representative of a guard unit under Section 9(b)(3) of the Act.

Thus, the issues to be decided herein are:

1. Whether the Petitioner is an eligible labor organization under Section 9(b)(3) of the Act that can be certified as the representative of a guard unit?

2. Whether the petitioned-for combined four state unit or the existing four separate units is appropriate for collective bargaining?

II. Decision

I find that the Petitioner is an eligible labor organization to represent guard units as there is no record evidence that the Petitioner has admitted any non-guard employees into its membership as prohibited under Section 9(b)(3) of the Act.

Further, it is the opinion of the undersigned that the petitioned-for unit may constitute an appropriate unit and that the existing four separate units may also constitute appropriate units. As I find that both of the unit configurations sought by the parties may constitute appropriate units, I shall not make a final unit determination at this time. Rather, the issue of the unit configuration will be submitted to the employees by directing separate self determination elections in each of the four states pursuant to the procedure used by the Board in *Amax Coal Co.,* 243 NLRB 571, 573 (1979). By doing so, the employees can select separate representation by the Petitioner or the Intervenor, or representation in an overall four state unit by the Petitioner.

Accordingly, IT IS HEREBY ORDERED that separate elections be conducted under the direction of the Regional Director for Region 13 in the following voting groups: [3]

Voting Group A: All full time and regular part time security guards working in the state of Illinois assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

Voting Group B: All full time and regular part time security guards working in the state of Minnesota assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

Voting Group C: All full time and regular part time security guards working in the state of Indiana assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all manag-

[3] Both the Petitioner and the Intervenor indicated on the record that they wished to proceed in any unit found appropriate.

ers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

Voting Group D: All full time and regular part time security guards working in the state of Wisconsin assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

The employees in all four voting groups can vote whether they wish to be represented by International Union, Security, Police and Fire Professionals of America (SPFPA); by the Committee for Fair and Equal Representation; or by no labor organization. If the employees in any of the voting groups vote for representation by the Intervenor, they shall be deemed to have voted for separate representation[4], and the four voting groups will be four separate units and appropriate certifications for the election results will be issued in each of the following units appropriate for collective bargaining under Section 9(b) of the Act:

All full time and regular part time security guards working in the state of Illinois assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

All full time and regular part time security guards working in the state of Minnesota assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

All full time and regular part time security guards working in the state of Indiana assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

All full time and regular part time security guards working in the state of Wisconsin assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical

[4] The only two unit choices are the historical four separate units or the overall combined unit of all four states coming under the 4 State Contract. If any of the state voting groups votes for the Intervenor and, thus, separate representation, the remaining state voting groups would not constitute a homogeneous grouping with a community of interest apart from other employees. According, if any of the voting groups vote for representation by the Intervenor, only separate statewide units would be appropriate.

employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

However, if none of the voting groups vote for representation by the Intervenor, the votes of all four voting will be pooled and an appropriate certification of the voting results will issue in the following overall four state unit, which shall be deemed to constitute an appropriate unit for the purposes of collective bargaining under Section 9(b) of the Act:

> All full time and regular part time security guards working in the states of Illinois, Minnesota, Indiana, and Wisconsin assigned to the 4 State Contract, Department Homeland Security, for provisions of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, temporarily assigned employees, substitute employees and all other employees of the Employer.

III. Status of the Petitioner to Represent Guard Units

The Intervenor asserts that the Petitioner cannot be certified by the Board as the representative of the petitioned-for unit pursuant to the proscription of Section 9(b)(3) of the Act. Section 9(b)(3), in pertinent part provides, "but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." At the time of the hearing, the Petitioner was the collective bargaining representative for two units of guard employees, and all the members of the Petitioner were guard employees. The Intervenor's sole basis for challenging the Petitioner's ability to represent guard units pursuant to Section 9(b)(3) of the Act is that the bylaws of the Petitioner state, "Any person or group of persons employed by an affiliate company is eligible for membership in the local union." Based on this language, the Intervenor asserts that the Petitioner does not limit its membership to guards and in the future non-guards could become members of the Petitioner.

While the Petitioner's bylaws do not expressly limit membership to guards, the Petitioner's constitution states that one of the purposes of the Petitioner is "[T]o unite all security officers eligible for membership into one group, in an effort to seek favorable, beneficial and secure wages, hours and other terms and conditions relating to employment through collective bargaining. . ."

In applying Section 9(b)(3) of the Act, the Board has stated that the noncertifiability of a guard union must be shown by definitive evidence.

> Although the proviso restricts guards in their choice of bargaining representative, Section 9(b) requires that within these restrictions we are to assure employees the fullest freedom in exercising their rights. Accordingly, we find that the proviso to Section 9(b), when read in context, requires that the noncertifiability of a guard union must be shown by definitive evidence. Otherwise, the rights of guards to be represented by a union and of guard unions to represent guards would be seriously undermined.

Burns International Security Services, 278 NLRB 565, 568 (1986).

I find that the Petitioner is a certifiable guard union. It does not have any members that are non-guards, and speculation that it may in the future admit non-guards into membership

based on an ambiguously worded bylaw that is circumscribed by the Petitioner's constitutional purpose "to unite all security officers," is not definitive evidence of the "noncertifiability" of the Petitioner pursuant to Section 9(b)(3) of the Act.

IV. The Appropriate Unit

A. Organization

The Employer is engaged in the business of providing guard services to private and public entities, including the Department of Homeland Security. The petitioned-for unit consists of the Employer's guard employees assigned to work under the 4 State Contract between the Employer and the Department of Homeland Security, one of several contracts the Employer has with the Department of Homeland Security. Pursuant to the 4 State Contract, the Employer provides guards services to federal facilities in the states of Illinois, Indiana, Minnesota, and Wisconsin. The Employer has divided the 4 State Contract work into two districts, each headed by a Project Manager. District 1 consists of the 4 State Contract work in Illinois and Indiana. District 2 consists of the 4 State Contract work in Minnesota and Wisconsin. Under the Project Managers for each district are Captains. There is one Captain each for Indiana, Minnesota, and Wisconsin and two Captains for Illinois – one in Chicago[5] and one in Springfield. Under the Captains in the Employer's hierarchy are Lieutenants and Sergeants. Captains are usually stationed in the largest operation in their jurisdiction and are considered site managers by the Employer. The Lieutenants are considered by the Employer to be field managers that travel from site to site overseeing their operation. Sergeants are assigned to the larger buildings in their area and act as the Employer's lead officer in that building.

B. Bargaining History

The Employer took over the 4 State Contract work in July 2004 from the predecessor contractor, GSSC[6]. In April 2005, the Employer entered into four separate collective bargaining agreements with the Intervenor effective by their terms from April 1, 2005 through September 30, 2007. Each of these agreements covered one of four states of the 4 State Contract and was between the Employer, the Intervenor, and a specific local of the Intervenor for each state.[7] The terms of the agreements are the same with the exception of wages, which are part of an appendix attached to each agreement and vary for each state. While each agreement has an expiration date of September 30, 2007, with automatic renewal absent written notice of termination, the cover pages for each agreement are for the years 2005 – 2008, and the appendix attached to each agreement provide for wage reopeners effective for October 1, 2006 and for October 1, 2007, a day after the termination date set forth in the contracts. There were wage reopeners conducted in 2006 and 2007 between the Employer and the Intervenor with the appropriate local for each agreement. The negotiations were done telephonically in a series to separately negotiate a wage

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[5] All the Captains, with the exception of the Captain stationed in Chicago, supervise only security guards employed within the state they are stationed. The Captain in Chicago is responsible for the supervision of approximately 15 security guards stationed in Northwest Indiana.

[6] At the hearing the Petitioner attempted to cross examine witnesses as to the nature of the unit that existed under GSSC, implying that it was a single four state unit, but was precluded from doing so by the Hearing Officer. Even assuming arguendo, that the unit was a single four state unit under the previous employer, I find that this factor would not change the result reached herein.

[7] Amalgamated Local 200 is on the agreement covering Illinois, Amalgamated Local 201 is on the agreement covering Minnesota, Amalgamated Local 202 is on the agreement covering Indiana, and Amalgamated Local 203 is on the agreement covering Wisconsin.

scale for each agreement. Notwithstanding the termination dates on the bargaining agreements in the record, there are four collective bargaining agreements in place between the Intervenor and its locals and the Employer due to expire sometime later this year[8], and recent negotiations have resulted in tentative agreements to replace the four expiring collective bargaining agreements.

C. Terms and Conditions of Employment

All of the security guards working under the 4 State Contract perform the same functions regardless of which state they are employed. They are classified either as a "guard one" or "guard two." A guard one is an unarmed guard working under a federal contract and a guard two is an armed guard working under a federal contract. With the exception of wages, most of the terms and conditions of employment are the same for all the security guards regardless of which state they are employed by virtue of the requirements of the 4 State Contract between the Employer and the Department of Homeland Security, and the identical language of the four separate bargaining agreements between the Employer and the Intervenor. However, the security guards seniority is autonomous within each state, and there are no provisions for the transfer of security guards from one state to another state within the 4 State Contract. There are two instances of security guards moving form one state to another state, where they were treated as "quit" and "rehire" situations in which the employees did not retain seniority under the collective bargaining agreements between the Employer and the Intervenor. Similarly, there is no interchange of security guards between states for bargaining unit work under the 4 State Contract The basis for the lack of interchange between the states and for the separate state based seniority stems from the fact that the Employer's security guards are required to be licensed or certified by the state in which they are employed. Each state covered by the 4 State Contract has different licensing or certification requirements and there is no reciprocity between the states. Thus, for the most part, a security guard is restricted to the state in which he/she is licensed or certified. Security guards can voluntarily take temporary out-of-state assignments for FEMA (Federal Emergency Management Administration) for emergency disaster work. However, this is considered non-unit work as it is outside of the 4 State Contract and the collective bargaining agreements between the Employer and the Intervenor.[9]

The record indicates that there is supervision of the Employer's security guards on a corporate level, a district level, a state/captain level, and field or small geographic level. Much of the day-to-day supervision occurs on the level of the Lieutenants and Captains on such matters as assignments, vacation/time-off requests, and verbal discipline. Any discipline above a verbal warning has to be approved at the corporate level. Level one grievances are handled by Captains, level two grievances are handled by Project Managers, and level three grievances are handled at the corporate level.

[8] The parties stipulated that there is no contract bar to the instant petition, presumably because of the ambiguity in the record regarding the expiration date and/or renewal of the collective bargaining agreements.

[9] The collective bargaining agreements between the Intervenor and the Employer require that security guards on temporary FEMA assignments receive their contractual pay rate for those assignments.

V. Analysis

While there are a myriad of possible unit choices given the Employer's organizational structure and the circumstances presented herein[10], the petition and the positions of the parties present only two possible appropriate unit choices - (1) a single unit of all security guards working under the 4 State Contract as petitioned for; or (2) the existing four statewide units currently represented by the Intervenor.

The record shows that the overall four state unit sought by the Petitioner may constitute an appropriate unit. An overall 4 State Contract unit can be deemed appropriate on the basis of the identical terms and conditions that exist for all security guards pursuant to the 4 State Contract and by the substantially identical terms of the four collective bargaining agreements between the Employer and the Intervenor; the geographic cohesiveness of the four state grouping; the uniformity of job classifications and job functions throughout the four states area; centralization of significant labor relations functions; and a sufficiency of supervision on the four state level through the two Project Managers. In short, I find there is a sufficient community of interest between the security guards working under the 4 State Contract that an overall four state unit of the Employer's security guards may constitute an appropriate unit for the purposes of collective bargaining.

However, the history of bargaining in four separate units must be taken into account. In order to have an election only in the an overall four state unit, the Petitioner must demonstrate that the existing historical separate units are inappropriate. The Board has long held that when the appropriateness of a historical unit is challenged the party challenging the historical unit bears a heavy burden to show that the unit is no longer appropriate. *Canal Carting, Inc.,* 339 NLRB 969 (2003); *Great Atlantic & Pacific Tea Co.,* 153 NLRB 1549 (1965). The Petitioner has not demonstrated that the four separate units represented by the Intervenor are inappropriate. To the contrary, the record shows that those units continue to be appropriate. In addition to a history of collective bargaining of at least three years in separate units, the four existing units are also appropriate based on other factors. The existing historical units operate as separate self contained statewide units with no real interchange of employees between units, seniority is restricted to each self contained statewide unit, and job assignments and day-to-day supervision, with one exception, occur within each separate statewide unit. As the historical units represented by the Intervenor continue to be appropriate, it would be contrary to Board policy to conduct an election that negates or ignores those units by conducting an election only in a combined overall unit. *Amax Coal Co.,* supra; *Canal Carting,* supra. Thus, even though the petitioned-for unit may be appropriate, the existing separate units represented by the Intervenor are appropriate and must be taken into account in any unit determination.

In taking into account the continued appropriateness of the historical separate units, I find that this does not preclude, in the circumstances herein, a finding that a combined unit may also be appropriate. [11] The substantial weight given to bargaining history goes to the issue of the ap-

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[10] For example, district-wide units under the Project Managers or area-wide units under each Captain are possible unit configurations.

[11] While a history of collective bargaining is given substantial weight when the continued appropriateness of the historical unit is challenged, that history does not preclude a finding that another unit may also be appropriate in situations where the viability of the appropriateness of the historical unit is not negated. The interest in industrial stability and interest of the employees in the historical unit is maintained by the self-determination election procedure. Furthermore, finding both the overall and separate units to be appropriate and directing an election in which

propriateness of historical units, it does not go the appropriateness of other unit configurations or require a selection of historical units as the most appropriate units. The Board has long held that it is not required to find the most appropriate unit or the only appropriate unit. It is only required to find a unit to be appropriate. *Overnight Transportation Co.,* 322 NLRB 723 (1996). Thus, where a party seeks to incorporate appropriate separate historical units into a larger unit that may also be appropriate, the Board has concluded that the employees should be given the choice with respect to which unit configuration(s) they wish to be represented in. *Whiting Milk Co.,* 137 NLRB 1143 (1962); *Amax Coal Co.,* supra. The situation herein is analogous to that found in *Amax Coal.* In that case, the Board found a petitioned-for unit of two coal mines, located 26 miles apart, could constitute an appropriate unit. The Board also found that one of the mines, represented by the intervening union, could also constitute an appropriate unit on the basis of a history of collective bargaining and other factors indicating the appropriateness of such a unit. The Board stated "we are reluctant to combine the employees in the existing unit with the previously unrepresented employees at Eagle Butte without granting both groups an opportunity to express their choice with respect to this matter." 243 NLRB at 573. Based on finding that either the combined two mine unit or separate units would be appropriate, the Board found:

> We therefore do not render a final determination as to the appropriate unit at this time; rather we shall submit the issue to the employees by directing separate elections at each mine. By doing so, the employees at each mine will be able to select separate representation if they so desire.

Id. 573. The Board further stated that if either or both of the voter groups selected the intervening union that was seeking separate units, certifications would issue for separate units. If the voters in both groups did not select the intervening union, they would be combined into a single unit and their votes would be pooled.

As I have found that the four separate units presently represented by the Intervenor may continue to constitute appropriate units and that the combined four state unit of employees working under the 4 State Contract may also constitute an appropriate unit, I have directed elections in the four voting groups as set forth above with the appropriate unit or units to be found based on the election results as set forth above. There are approximately 202 employees in Voting Group A; 94 employees in Voting Group B; 107 employees in Voting Group C; and 87 employees in Voting Group D.

VI. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the voting groups A, B, C, and D at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting groups A, B, C, and D who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their

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the employees can choose their representative and the nature of the unit configuration enhances the employees' exercise of their rights under Section 7 of the Act.

status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union, Security, Police and Fire Professionals of America (SPFPA)[12]; by the Committee for Fair and Equal Representation; or by no labor organization.

VII. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that **3 copies of an eligibility list for each voting group** containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make these lists available to all parties to the election. In order to be timely filed, such lists must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before **August 21, 2008.** No extension of time to file these lists will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

[12] The record does not indicate whether the Intervenor wishes its four local unions to be named along with the Intervenor on the ballots for the voting group in which the local union appears on the recent collective bargaining agreement. Accordingly, the Intervenor is given 48 hours after the issuance of this decision to inform the Region and the other parties how it wants to appear on the ballots.

IX. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **August 28, 2008.**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 14th day of August 2008.

Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

CATS — self-determination election
Blue Book – 339-7575-7575; 3355-2201; 355-2275; 355-2280; 420-1209; 440-1760-5301.
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